



### Staff Notes- History of Prior Proposals related to Code Enforcement

On May 12, 2020, the City of John Day Planning Commission and John Day City Council held a joint hearing to address AMD-20-01; a Code Amendment requested by City staff to strengthen code enforcement provisions. The Department of Land Conservation and Development (“DLCD”) was notified 39 days in advance of the hearing, individual notice for the amendment was sent 29 days in advance, and notice was published in a local newspaper 20 days in advance. The Planning Commission held a public hearing and recommended the amendment to the City Council on May 12, 2020. The City Council adopted it the same day immediately following the first hearing.

Ken Katzaroff, attorney for Riverside Home Park (“Riverside”) challenged the amendment by appealing the decision to the Land Use Board of Appeals (LUBA) on June 2, 2020 on the grounds that the City did not provide notice to the attorney directly, that the notice did not sufficiently describe the scope of the amendment, and that the city should have held the two meetings on separate days (Item A). In consideration of Riverside’s procedural concerns and to allow Riverside to submit testimony, the John Day city council agreed to restart these proceedings and a copy of the formal decision on reconsideration (Resolution No. 20-848-21) was filed with the Land Use Board of Appeals (Item B).

The City then elected to propose a second version of the amendment (AMD-20-08) in order to re-start the notification process and allow for public testimony from Riverside, so a hearing was scheduled for September 1, 2020. Notice was provided to DLCD on July 28, 2020. The public notice was sent to every property owner on record within the city of John Day and to Mr. Katzaroff directly on July 30, 2020 and was published in the local paper on August 12, 2020. Mr. Katzaroff, on behalf of Riverside, submitted substantive public testimony to the Planning Commission (Item C). On the evening of the September 1 hearing, a quorum of the planning commissioners was not able to be present due to a clerical error in the dial-in number posted to the City’s website. The hearing was rescheduled for November 18, 2020.

Notice for the November 18, 2020 hearing was sent to every property owner on record and to Mr. Katzaroff directly on October 23, 2020- 26 days in advance of the hearing. A new notice was provided to DLCD on October 8, 2020- 41 days in advance. This code amendment was submitted as a new amendment (AMD-20-10) and was noticed as Ordinance No. 20-187-08. Notice was printed in the newspaper on October 28- 21 days in advance of the first hearing. Staff consulted with the City’s local DLCD representative the day prior to the hearing to ensure compliance with the state’s notification requirements (Item D), however, Mr. Katzaroff contacted the City to note a discrepancy in the city’s code regarding DLCD notification. The Code contains a relic from prior state statutes requiring 45-days’ notice rather than 35 days. Because of the error, staff recommended that the Planning Commission postpone the hearing until January 12, 2021. The Commission unanimously voted to postpone the hearing to a date and time certain during the November 18 hearing.

Public notice was published in the local newspaper and sent to every property owner of record within the City of John Day on December 17, 2020. This notice was not technically required because the hearing was set over to a specific date and time, but the City elected to send the notice in order to increase public confidence and ensure adequate participation in the process. Mr. Katzaroff submitted



public comment on the proposal (Item E) expressing substantive and speculative concerns regarding the language of the proposal. His comments were addressed as follows:

1. “Violations... are hereby deemed a public nuisance...”

*Riverside expressed concerns about the ambiguity of the language and the applicability of the nuisance ordinance to technical violations of the code. The intent of declaring violations of the Code to be a public nuisance as noted in Section B was included to provide an opportunity for due process of development code violations by using the City’s existing enforcement and abatement procedures adopted under the John Day Nuisance Ordinance, rather than defining and adopting a separate set of procedures for enforcement of development code violations.*

2. “A violation means the property has been determined to not be in compliance with the Development Code or other applicable law either through a prior notice...”

*Riverside requested that a prior notice of a violation not be included as a determination of a property being out of compliance with the development code. The Planning Commission discussed the concern and recommended that “prior notice” be removed from this section or clarified to include an exception for notices that were being adjudicated.*

3. Non-Conforming use specification

*Riverside requested that valid and existing non-conforming uses be addressed specifically in this portion of the code. The code already addresses non-conforming uses in Chapter 5-5.2, but staff has since incorporated reference to the non-conforming use provisions in the current version of the amendment.*

4. “This term [Planning Official] includes any designee of the Planning Official.”

*Riverside challenged the definition of a planning official on the grounds that the role is overly broad and doesn’t include requirements for specific qualifications. After the January hearing, staff considered amending the phrase to say “any qualified designee”, but ultimately found the clarification to be redundant. The discretion of the Chief Planning Official is necessary in the definition and the “qualified” designation does not reduce ambiguity.*

5. Vicarious liability

*Riverside requested that the vicarious liability provision be removed from the amendment. The City found this provision to be both necessary and wholly consistent with state law.*

6. Permit revocation



*Riverside requested that the permit revocation procedures included in section D be removed. The City found that the procedures created in the ordinance and imposed on applicants who fail to comply with the code are necessary and consistent with similar provisions in state law.*

During the public portion of the January 12 hearing, Mr. Katzaroff spoke on behalf of Riverside to reiterate the comments in Item E. The Planning Commission recommended that the City Council approve the amendments with the noted changes.

The City Council met on February 23, 2021 to discuss the recommendation and hold another public hearing. Riverside submitted public comment addressing the concerns discussed during the planning commission meeting and requesting the ordinance be remanded back to the Planning Commission for further revision (Item F). During the February 23 City Council meeting, the discussion revolved primarily around the Nuisance Ordinance, which was adopted in 2015. The City Council did not want the development code to be tied to the nuisance code in this way, and requested that the procedures of the development code be enumerated independent of the nuisance ordinance provisions. The Council unanimously voted to continue the hearing to March 23. Staff worked with city attorneys and contract planners to revise the proposed language and ultimately decided to substantially change the amendment to remove the abatement procedures and to define violations as such rather than including reference to the nuisance code.

Due to the extent of the revisions, Staff recommended that the Council remand the amendment back to the planning commission for further discussion. The City Council unanimously voted to do so at the March 23 hearing, and to remand it to the planning commission's hearing scheduled for April 7, 6 PM.

Notice of the hearing was published in the newspaper on March 24 and a meeting of the planning commission was held on April 7, with four planning commissioners in attendance. Mr. Katzaroff submitted a comment on April 5 (Item G) addressing the revisions being discussed. The concerns addressed at the April 7 planning commission hearing, and reiterated in Item G are as follows:

1. The amendment should have been re-noticed

*Staff recommended remanding the amendment back to the planning commission specifically so that substantial changes could be addressed. Participants were contacted directly, but the City did not deem it necessary to re-notice residents who had not been engaged in the process up to that point.*

2. Compliance with the development code may not be evaded in the event that an applicant claims they didn't know their development was out of compliance.

*In prior versions of the amendment, Section B stated that an applicant must certify that, "to the best of the applicant's knowledge, the subject property including any prior development phases of the property, is currently in compliance with both the Development Code and any applicable prior land use approvals for the property." Staff is concerned that this phrasing absolves an applicant of the responsibility of ensuring the property is in compliance. The phrase "to the best*



*of the applicant's knowledge" has been removed in order to shift the burden of proof to the applicant to ensure compliance.*

3. Riverside recommended that the definition of "property" be amended to specify that in the context of mobile home parks, the term "property" only include the specific residential lot designated for a single dwelling, rather than the entire park.

*The City has considered the request to define lots within a park as individual properties. There are several issues staff have addressed when considering this specification. First, the lots within a manufactured dwelling park are not legally defined and recorded like most properties are. Lot lines and space boundaries may be adjusted, removed, and expanded without land use approval or documentation. Second, the change would reduce the City's ability to hold a park owner accountable for Code violations occurring within the park by requiring abatement of active violations prior to the approval of new manufactured home placement permits. If the Planning Commission elects to incorporate the change recommended by Riverside, Staff would also like to require parks to submit official surveyed plat maps of the designated spaces within a park.*

The commissioners voted unanimously to recommend Ordinance No. 20-187-08 for adoption as submitted. Later that day, Mr. Katzaroff in an email to the City's attorney challenged the decision on the grounds that a quorum of planning commissioners was not present. Under Title 2-1-2 of the city code, *"The number of members of the Planning Commission, hereinafter called "Commission," shall be nine. Two of the members shall be members of the City Council, who shall be ex-officio members. One other member shall be a resident and inhabitant of the urban growth area surrounding John Day, but outside the City limits, and the other six members shall be residents and inhabitants of the City."*

The City has a nine-member planning commission and two of the members are City Councilors who serve as ex-officio members. ORS 227.030 says that "not more than two members of a city planning commission may be city officers who shall serve as ex-officio nonvoting members." With four planning commissioners in attendance, a quorum of voting members was present, but the city elected to re-notice the ordinance and hold another Planning Commission hearing regardless.

On April 21, the City re-mailed notice for Ordinance No. 20-187-08 (AMD-20-10) of a planning commission hearing to be held on May 20, 2021. The notice was also provided to DLCD on April 5 and was published in the newspaper on April 28, 2021.

Staff continues to recommend adoption of Ordinance No. 20-187-08 as submitted with the changes recommended during the April 7 hearing. Staff is enclosing complete copies of all public comments submitted by Mr. Katzaroff on this matter for inclusion in the hearing record.

Respectfully submitted this 3<sup>rd</sup> day of May, 2021,

City Planning Staff



Enclosures:

- Item A. 6-2-20 letter to the City
- Item B. Order LUBA No. 2020-056 and Resolution 20-848-21 (01267401xB6300)
- Item C. 8-2-20 Comments to the Planning Commission
- Item D. 11-17-20 DLCDC Review
- Item E. 1-12-20 Comments to the Planning Commission
- Item F. 2-19-21 Letter to the City Council
- Item G. 4-5-21 Comments to the Planning Commission